

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 TIMMY JOHN WEBER,

8 Petitioner,

9 v.

10 WILLIAM GITTERE,¹ *et al.*,

11 Respondents.

Case No. 3:11-cv-00104-RFB-WGC

ORDER

12
13 This capital habeas corpus action has been stayed since October 15, 2012, while
14 the petitioner, Timmy John Weber, exhausted claims in state court. ECF No. 49. On March 5,
15 2021, Weber, represented by appointed counsel, filed a motion to vacate the stay and reopen these
16 proceedings. ECF No. 74. In that motion, Weber states that his state-court proceedings have
17 concluded. On March 11, 2021, the Respondents filed a notice stating that they do not oppose
18 Weber's motion. ECF No. 76.

19 The court will grant Weber's motion to vacate the stay and will set a schedule for further
20 proceedings in this action.

21 **IT IS THEREFORE ORDERED** that the motion to vacate the stay and reopen these
22 proceedings (ECF No. 74) is GRANTED. The stay of this action is lifted.

23 **IT IS FURTHER ORDERED** that the following schedule shall govern the further
24 proceedings in this action:

25 1. Amended Petition. Petitioner will have 60 days from the date of this order to file a third
26 amended petition for writ of habeas corpus. The third amended petition must specifically state

27
28 ¹ As the current warden of Ely State Prison, William Gittere is substituted for Renee Baker as a respondent. See Fed. R. Civ. P. 25(d).

1 whether each ground for relief has been exhausted in state court; for each claim that has been
2 exhausted in state court, the third amended petition must state how, when, and where that occurred.

3 2. Response to Petition. Respondents will have 60 days following the filing of the third
4 amended petition to file an answer or other response to the third amended petition.

5 3. Reply and Response to Reply. Petitioner will have 45 days following the filing of an
6 answer to file a reply. Respondents will thereafter have 30 days following the filing of a reply to
7 file a response to the reply.

8 4. Briefing of Motion to Dismiss. If Respondents file a motion to dismiss, Petitioner will
9 have 60 days following service of the motion to file a response to the motion. Respondents will
10 thereafter have 30 days following the filing of the response to file a reply.

11 5. Discovery. If Petitioner wishes to move for leave to conduct discovery, Petitioner must
12 file such motion concurrently with, but separate from, the response to Respondents' motion to
13 dismiss or the reply to Respondents' answer. Any motion for leave to conduct discovery filed by
14 Petitioner before that time may be considered premature, and may be denied, without prejudice,
15 on that basis. Respondents must file a response to any such motion concurrently with, but separate
16 from, their reply in support of their motion to dismiss or their response to Petitioner's reply.
17 Thereafter, Petitioner will have 20 days to file a reply in support of the motion for leave to conduct
18 discovery.

19 6. Evidentiary Hearing. If Petitioner wishes to request an evidentiary hearing, Petitioner
20 must file a motion for an evidentiary hearing concurrently with, but separate from, the response to
21 Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for an
22 evidentiary hearing filed by Petitioner before that time may be considered premature, and may be
23 denied, without prejudice, on that basis. The motion for an evidentiary hearing must specifically
24 address why an evidentiary hearing is required and must meet the requirements of 28 U.S.C. §
25 2254(e). The motion must state whether an evidentiary hearing was held in state court, and, if so,
26 state where the transcript is located in the record. If Petitioner files a motion for an evidentiary
27 hearing, Respondents must file a response to that motion concurrently with, but separate from,
28 their reply in support of their motion to dismiss or their response to Petitioner's reply. Thereafter,

1 Petitioner will have 20 days to file and serve a reply in support of the motion for an evidentiary
2 hearing.

3 DATED: June 3, 2021

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23


24

25

26

27

28



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE